



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/428, 371 10/28/99 SODERLUND

D 19603/606-(C)

EXAMINER

HM12/0321

MICHAEL L GOLDMAN  
NIXON PEABODY LLP  
CLINTON SQUARE PO BOX 1051  
ROCHESTER NY 14603

ZARA, J.  
ART UNIT

PAPER NUMBER

1635  
DATE MAILED:

13

03/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

File

<b>Advisory Action</b>	Application No. <b>09/428,371</b>	Applicant(s) <b>Soderlund et al.</b>
	Examiner <b>Zara, Jane</b>	Group Art Unit <b>1635</b>

## THE PERIOD FOR RESPONSE: [check only a) or b)]

a)  expires 6 months from the mailing date of the final rejection.

b)  expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

**Applicant's response to the final rejection, filed on Feb 12, 2001 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:**

The proposed amendment(s):

will be entered upon filing of a Notice of Appeal and an Appeal Brief.

will not be entered because:

- they raise new issues that would require further consideration and/or search. (See note below).
- they raise the issue of new matter. (See note below).
- they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant's response has overcome the following rejection(s):  
\_\_\_\_\_  
\_\_\_\_\_

Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
\_\_\_\_\_

The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: 41-52 and 78-83 (*For reasons of record*)

The proposed drawing correction filed on \_\_\_\_\_  has  has not been approved by the Examiner.

Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Other See attachment.

Art Unit: 1635

***Attachment***

Claims 41-52 and 78-83 stand rejected under 35 U.S.C. 112, first paragraph, for the reasons of record set forth in the Office action mailed August 10, 2000, Paper No. 10.

Applicants cite several references describing the functional expression of voltage sensitive sodium channel proteins in *Xenopus* oocytes. The instant specification discloses the identification of nucleotide sequences, obtained from cDNA library screening, which nucleotides comprise SEQ ID Nos: 1 and 2, and which nucleotides share sequence homology with conserved regions of previously identified functional sodium channels. The instant specification shows gene linkage between partial nucleotide sequences identified from cDNA library screening and a previously identified insecticide resistance trait. The specification does not, however, provide any evidence that the nucleotides identified as SEQ ID Nos: 1 and 2, which nucleotides share sequence homology with previously identified sodium channels, have the proposed voltage sensitive sodium channel function, which function is necessary for the screening methods of the claimed invention. Homology does not imply function. Applicants have not demonstrated that the nucleotide sequences of SEQ ID Nos: 1 and 2 encode functional voltage sensitive sodium channels. Applicants have not demonstrated any methods of screening chemical agents for their ability to modify sodium channel function using SEQ ID Nos: 1 and 2.



SEAN McGAHEY  
PRIMARY EXAMINER  
TC 1600